

OFFICE OF THE SECRETARY OF STATE
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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 137
DEPARTMENT OF JUSTICE

FILED

01/14/2021 1:57 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update counselor maximum payment amounts for CVCP and SAVE; minor changes to CVCP.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/01/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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1162 Court St NE
Salem, OR 97301

Filed By:
Rebecca Shaw
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/22/2021

TIME: 11:00 AM - 12:00 PM

OFFICER: Rebecca Shaw

ADDRESS: Dept of Justice

1162 Court St NE

Salem, OR 97301

NEED FOR THE RULE(S):

The maximum payment amounts for counselors for the Crime Victims' Compensation Program and the Sexual Assault Victims' Emergency Medical Response Fund are well below the current reimbursement rates for counseling services. The increase reflects the need to provide adequate reimbursement for counselors willing to assist victims and survivors of crime who do not have mental health insurance. Other changes include an increase to the CVCP mileage reimbursement rate, and the removal of the definition for substantial provocation.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Internal reports available upon request.

FISCAL AND ECONOMIC IMPACT:

Unable to determine at this time.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

- 1) Oregon Dept of Justice, Crime Victim and Survivor Services Division.
- 2) Small businesses will not be adversely affected by this rule change.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses will not be adversely affected by this rule change.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Changes are minimal and/or increase payouts to counselors and victims and survivors.

RULES PROPOSED:

137-076-0010, 137-076-0017, 137-076-0019, 137-076-0030, 137-084-0020

AMEND: 137-076-0010

RULE SUMMARY: The maximum payment amounts for counselors for the Crime Victims' Compensation Program and the Sexual Assault Victims' Emergency Medical Response Fund are well below the current reimbursement rates for counseling services. The increase reflects the need to provide adequate reimbursement for counselors willing to assist victims and survivors of crime who do not have mental health insurance. Other changes include an increase to the CVCP mileage reimbursement rate, and the removal of the definition for substantial provocation.

CHANGES TO RULE:

137-076-0010

Definitions ¶¶

As used in ORS 147.005 through 147.367 and OAR Chapter 137 Division 76, unless the context requires otherwise:¶¶

- (1) "Counseling" as used in ORS 147.005(5) means the assessment, diagnosis or treatment of mental, emotional or behavioral disorders or trauma directly related to a compensable crime.¶¶
- (2) "Department" means the Crime Victims' and Survivor Services Division of the Department of Justice.¶¶
- (3) "Direct or collateral review" as used in ORS 147.035 means proceedings in the Oregon Court of Appeals or Supreme Court to review a judgment of conviction, appeals by the State under ORS 138.06045, judicial review of a petition for post-conviction relief filed by a petitioner under ORS 138.540, or federal habeas corpus proceedings under 28 U.S.C. 2254.¶¶
- (4) "Disability" means the temporary or permanent inability to perform one's essential job duties. The disability must be established by medical evidence supported by the objective findings of a medical practitioner.¶¶
- (5) "Failure to cooperate" as used in ORS 147.015 means any act or omission by a victim that prejudices a law enforcement agency in the timely investigation of a crime or which causes the agency to abandon its investigation, or prejudices a prosecuting official in a timely prosecution of the crime or causes or contributes to a decision by the official to abandon prosecution.¶¶
- (6) "Family" as used in ORS 147.035(4)(a) means any of the following, determined at the time of the compensable crime:¶¶
 - (a) Any person related to the victim by blood, marriage or adoption;¶¶
 - (b) The partner, domestic partner, or fianc[¶] of the victim or of a parent of the victim; or¶¶
 - (c) Any person who had the same primary residence as the victim at the time of the compensable crime.¶¶
- (7) "Immediate family member" as used in ORS 147.005(14) means any of the following, determined at the time of the compensable crime:¶¶
 - (a) Any person related to the victim by blood, marriage, or adoption within the 3rd degree of consanguinity; or¶¶
 - (b) The partner, domestic partner, or fianc[¶] of the victim or of a parent of the victim.¶¶
- (8) "Interest of justice requires" as used in ORS 147.105(6) includes, but is not limited to a situation where an

applicant who failed to satisfy a financial obligation has applied for crime victim compensation as a victim of domestic violence or sexual assault, unless the unpaid financial obligation arose from restitution owed as a result of a violent crime perpetrated by the applicant.¶

(9) "Household member" as used in ORS 147.005(14) means any person who had the same primary residence as the victim at the time of the compensable crime.¶

(10) "Financial obligation" as used in ORS 147.105(6) means a financial debt ordered or imposed by a court, within or outside of the State of Oregon, as a result of a previous criminal conviction.¶

(11) "Friend or acquaintance" as used in ORS 147.025(2)(b) means a person the victim knew well and with whom the victim had an amicable relationship, or someone who had been introduced to, or knew the victim, but who may not have been a close friend.¶

(12) "Good cause" for failure to report or cooperate with law enforcement as used in ORS 147.015(1)(b) and 147.015(1)(c) exists if:¶

(a) The victim fails to report or cooperate based on a reasonable fear that doing so would result in retaliation to the victim or another person;¶

(b) The crime committed against the victim is sexual assault, domestic violence or stalking;¶

(c) The crime is physical or sexual abuse and the victim is a child under 18 years of age;¶

(d) The victim fails to report or cooperate due to the traumatic nature of the crime;¶

(e) The victim is physically unable to report or cooperate because of the severity of the trauma resulting from the crime; or¶

(f) Any other circumstance for which the Department of Justice determines satisfactory.¶

(13) "Good cause" for failure to satisfy a financial obligation as used in ORS 147.105(6) means a physical or mental injury suffered by the applicant that can be documented by a medical practitioner that caused the applicant to be unable to satisfy a financial obligation.¶

(14) "Involved in the hearing" and "involved in the oral argument" as used in ORS 147.005(11), 147.025 and 147.035 means that the victim, survivor, dependent or personal representative attended the hearing or oral argument, or participated in the hearing by providing testimony or a written statement.¶

(15) "Medical practitioner" means one of the following medical providers who are able to prescribe controlled substances in the course of professional practice:¶

(a) Doctor of Medicine licensed under ORS Chapter 677;¶

(b) Doctor of Osteopathy licensed under ORS Chapter 677;¶

(c) Podiatric Physician or Surgeon licensed under ORS Chapter 677;¶

(d) Dentist or Oral Surgeon licensed under ORS Chapter 679;¶

(e) Nurse Practitioner licensed under ORS Chapter 678;¶

(f) Physician's Assistant with drug dispensing authority from the Board of Medical Examiners for the State of Oregon licensed under ORS Chapter 677; or¶

(g) Naturopathic Physician licensed under ORS Chapter 685.¶

(16) "Personal representative" as used in ORS 147.025(3)(a) means a person selected by the victim, survivor or dependent to attend the hearing or oral argument on behalf of the victim, survivor, or dependent.¶

(17) "Prior resource" means a benefit, court award or settlement payable or available to the victim or survivor. Prior resource may include but is not limited to: private or public health insurance, automobile insurance, workers' compensation, disability insurance, homeowner's insurance, social security benefits, accidental death and dismemberment insurance, sick leave, paid time off, public assistance, restitution, civil settlements, and tribal per capita payments but does not include Indian Health Services insurance.¶

(18) "Reject with prejudice" means denial of the applicant's claim with conclusive and final legal effect.¶

(19) "Substantially attributable to the wrongful act of the victim" as used in ORS 147.015(1)(e) means the victim's injury was directly or indirectly attributable to a wrongful act from which there can be a reasonable inference that, had the act not been committed, the crime complained of likely would not have occurred.¶

(20) "Substantial provocation" as used in ORS 147.015(1)(e) means a voluntary act by the victim which was intended or likely to provoke a violent response, and from which there can be a reasonable inference that, had the

~~act not occurred, the crime likely would not have occurred.~~

(21) "Wrongful act" means any act that is unlawful or meets the elements of a crime, violation or infraction.

"Wrongful act" also includes but is not limited to a parole or probation violation or violation of a custody release agreement.

Statutory/Other Authority: ORS 147.205(1)

Statutes/Other Implemented: ORS 147.005, 147.015(1), 147.025(3)(a), 147.125(1)(c)

AMEND: 137-076-0017

RULE SUMMARY: The maximum payment amounts for counselors for the Crime Victims' Compensation Program and the Sexual Assault Victims' Emergency Medical Response Fund are well below the current reimbursement rates for counseling services. The increase reflects the need to provide adequate reimbursement for counselors willing to assist victims and survivors of crime who do not have mental health insurance. Other changes include an increase to the CVCP mileage reimbursement rate, and the removal of the definition for substantial provocation.

CHANGES TO RULE:

137-076-0017

Contributory Conduct ¶

(1) For the purposes of ORS 147.125(1)(c) the Department may deny or reduce an award of compensation up to one hundred percent (100%) when there is evidence that voluntary conduct by the victim directly or indirectly contributed to the victim's injuries or death.¶

(2) When determining the degree or extent to which the victim's conduct directly or indirectly contributed to the injury or death of the victim under ORS 147.125(1)(c) the Department may consider all relevant circumstances related to the victim's conduct, including whether it would have been foreseeable to a reasonable person that injury or death may result from the conduct.¶

(3) Contributory conduct by a victim may include, but is not limited to:¶

(a) Evidence the victim engaged in specific and recent violence directed toward the suspect for which the suspect is retaliating;¶

(b) Actions on the part of the victim that places the suspect in imminent fear of physical injury; ~~if the suspect was not engaged in similar posturing;~~¶

~~(c) Failing to retreat from a situation when the risk of injury is imminent and the option to retreat is readily available;~~¶

~~(d) Initiating or escalating a confrontation through actions.~~

Statutory/Other Authority: ORS 147.125(1)(c)

Statutes/Other Implemented: ORS 147.125

AMEND: 137-076-0019

RULE SUMMARY: The maximum payment amounts for counselors for the Crime Victims' Compensation Program and the Sexual Assault Victims' Emergency Medical Response Fund are well below the current reimbursement rates for counseling services. The increase reflects the need to provide adequate reimbursement for counselors willing to assist victims and survivors of crime who do not have mental health insurance. Other changes include an increase to the CVCP mileage reimbursement rate, and the removal of the definition for substantial provocation.

CHANGES TO RULE:

137-076-0019

Fee Schedules ¶

The Department shall calculate payment of eligible crime-related medical expenses under ORS 147.005 to 147.367 as follows:¶

(1) When the victim of a compensable crime has been awarded compensation and does not have insurance benefits or any other prior resource to pay for crime-related medical or counseling expenses, the Department shall pay crime-related medical and counseling expenses at the rates in the Oregon Workers' Compensation medical fee schedules set forth in OAR 436-009-0040 except in the following circumstances:¶

(a) When crime-related medical expenses are incurred in another state, payment is made at 75% of the billed amount;¶

(b) Payment for medical expenses involving dental work shall be calculated based on Oregon regional dental charges using a Dental Customized Fee Analyzer, which is paid at the 75% percentile for the specific procedure. The Dental Customized Fee Analyzer is available for inspection at the offices of the Department, 1162 Court St NE, Salem, Oregon, 97301, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays;¶

(c) Ambulance and emergency transportation services are paid at 75% of the billed amount;¶

(d) Counseling services must be provided by one of the following counseling providers in order to be eligible for payment by the Department, and shall be paid at the following hourly rates as of March 1, 2021:¶

(A) Qualified Mental Health Professionals as defined in OAR 309-039-0510(10) shall be paid at the hourly rate of ~~\$57~~5.00;¶

(B) Counselors, therapists, and social workers licensed by the Oregon Board of Licensed Professional Counselors and Therapists under ORS 675.705 through 675.835 shall be paid at the hourly rate of ~~\$810~~5.00;¶

(C) Psychologists licensed under ORS Chapter 675 shall be paid at the hourly rate of ~~\$1430~~0.00;¶

(D) Psychiatric nurses licensed under ORS Chapter 678; shall be paid at the hourly rate of ~~\$1430~~0.00;¶

(E) Doctor of Medicine or Doctor of Osteopathy licensed under ORS Chapter 677 shall be paid at the hourly rate of ~~\$1450~~0.00.¶

(e) The Department may pay for other counseling services based on the nature of the victimization and the education, training and experience of the provider when sufficient documentation establishing the provider's education, training and experience is provided to the Department. The Department will determine the hourly payment amount based on the supporting documentation.¶

(2) For the purposes of ORS 147.035(7) and (8), "other expenses" related to the review or hearing shall be paid as follows, up to the maximum amount of the award or \$3,000, whichever is less:¶

(a) Lodging expenses shall be reimbursed at actual expense, not to exceed the ~~2017~~current federal per diem lodging rates for Oregon found at <http://www.gsa.gov/portal/content/104877>, if the location of the hearing or oral argument is more than 70 miles one-way from the residence of the victim, survivor, dependent, or personal representative, and upon submission of a valid receipt. Reimbursement will only be provided for the number of nights necessary for the victim, survivor, or dependent to attend or be involved in the hearing or oral argument, as determined by the Department;¶

(b) Other reasonable and necessary incidental expenses generally associated with travel and necessary for the victim, survivor, dependent, or personal representative to travel to the hearing or oral argument shall be paid at

actual expense, at the discretion of the Department, up to a total amount not to exceed the 2017 federal per diem incidental rates for Oregon found at <http://www.gsa.gov/portal/content/104877> and upon submission of a valid receipt;¶

(c) Mileage reimbursement shall be paid at \$0.350 per mile for actual round-trip travel from the residence of the victim, survivor, dependent, or personal representative to the location of the hearing or oral argument. In lieu of mileage reimbursement, the Department may, at its discretion, reimburse reasonable and necessary round-trip car rental or bus, train, or air fare, upon submission of a valid receipt.

Statutory/Other Authority: ORS 147.205(1)(c)

Statutes/Other Implemented: ORS 147.035

AMEND: 137-076-0030

RULE SUMMARY: The maximum payment amounts for counselors for the Crime Victims' Compensation Program and the Sexual Assault Victims' Emergency Medical Response Fund are well below the current reimbursement rates for counseling services. The increase reflects the need to provide adequate reimbursement for counselors willing to assist victims and survivors of crime who do not have mental health insurance. Other changes include an increase to the CVCP mileage reimbursement rate, and the removal of the definition for substantial provocation.

CHANGES TO RULE:

137-076-0030

Good Cause for Extending Application Deadline ¶¶

(1) An application for compensation shall be considered filed when received in the office of the Department.¶¶
(2) "Good cause" for failure to file an application for compensation within one year of the date of the crime under ORS 147.015(1)(~~f~~A) includes the victim's lack of knowledge of the Crime Victims' Compensation Program, failure of an investigating officer to provide information to the victim as required by ORS 147.365(1), or mental or physical trauma sustained by the victim rendering the victim unable to timely file the application for compensation. When good cause no longer exists, the victim must file the application for compensation within 30 days.

Statutory/Other Authority: ORS 147.205(1)

Statutes/Other Implemented: ORS 147.015

AMEND: 137-084-0020

RULE SUMMARY: The maximum payment amounts for counselors for the Crime Victims' Compensation Program and the Sexual Assault Victims' Emergency Medical Response Fund are well below the current reimbursement rates for counseling services. The increase reflects the need to provide adequate reimbursement for counselors willing to assist victims and survivors of crime who do not have mental health insurance. Other changes include an increase to the CVCP mileage reimbursement rate, and the removal of the definition for substantial provocation.

CHANGES TO RULE:

137-084-0020

Maximum Amounts Paid for Medical Services ¶¶

(1) For dates of service beginning July 1, 2019, the Fund will pay eligible medical services providers the costs incurred for providing sexual assault medical services to victims of sexual assault up to the following maximum amounts:¶¶

(a) \$475.00 for a medical examination plus collection of forensic evidence using the Oregon State Police SAFE Kit;¶¶

(b) \$215.00 for a medical examination without collection of forensic evidence using the Oregon State Police SAFE Kit;¶¶

(c) \$70.00 for emergency contraception (including pregnancy test);¶¶

(d) \$125.00 for sexually transmitted disease prophylaxis;¶¶

(e) Up to five (5) days of HIV prophylaxis will be paid at 50% of the amount charged, up to a maximum amount listed in 137-084-0020(h);¶¶

(f) \$95.00 for services provided by a Doctor of Medicine or a Doctor of Osteopathy;¶¶

(g) Payment for all other services provided in conjunction with the sexual assault exam will be calculated using the Oregon Workers Compensation Fee Schedule, up to a maximum amount listed in 137-084-0020(h); see section 137-084-0030 for examples of non-covered services;¶¶

(h) The combined maximum payment amount for services listed in 137-084-0020 (e) and (g) will not exceed \$2,000.00;¶¶

(i) Payment for laboratory and radiology services provided in conjunction with the sexual assault exam will be calculated using the Oregon Workers Compensation Fee Schedule up to a combined maximum amount of \$500.00;¶¶

(j) Any services provided after the date of the sexual assault exam will not be paid by the SAVE Fund with the exception of 137-084-0020(k). Services after this date may be covered by the Crime Victims' Compensation Program.¶¶

(k) Five (5) counseling sessions; counseling sessions expire 18 months from the date of the sexual assault exam. Hourly rates as of March 1, 2021:¶¶

(A) \$1450.00 per hour for a Doctor of Medicine;¶¶

(B) \$1430.00 per hour for a PhD, PsyD, or PMHNP;¶¶

(C) \$8105.00 per hour for an LCSW, LPC, or LMFT;¶¶

(D) \$575.00 per hour for a QMHP.¶¶

(l) The Department may pay for other counseling services based on the nature of the victimization and the education, training and experience of the provider when sufficient documentation establishing the provider's education, training and experience is provided to the Department. The Department will determine the hourly payment amount based on the supporting documentation.¶¶

(2) An additional payment of \$95.00 will be made to eligible medical services providers who document that the medical examination, as part of either a partial or complete medical assessment, was conducted by a SANE/SAE as described in section 137-084-0001 of these rules.¶¶

(3) The payment amounts set out in this rule will be reviewed at least every four years by the Attorney General or the Attorney General's designee to determine whether they should be adjusted to meet current circumstances.¶¶

(4) An eligible medical services provider (including subcontractor or other designee) who submits a bill to the Fund under these rules may not bill the victim or the victim's insurance carrier for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, or other services provided in conjunction with the sexual assault exam, except to the extent the Department is unable to pay the bill due to lack of funds or declines to pay the bill for reasons other than untimely or incomplete submission of the bill to the Fund under OAR 137-084-0030(2)(e).

Statutory/Other Authority: 2003 OL Ch. 789 (SB 752)

Statutes/Other Implemented: 2003 OL Ch. 789 (SB 752)